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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

A N A C T

RELATING TO WATERS AND NAVIGATION-RHODE ISLAND UNDERGROUND
STORAGE TANK FINANCIAL RESPONSIBILITY ACT

Introduced By: Representatives Tobon, Cunha, Barros, Shanley, and Maldonado

Date Introduced: February 15, 2017

Referred To: House Environment and Natural Resources

(Dept. of Environmental Management)

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 46-12.9-3, 46-12.9-4, 46-12.9-5, 46-12.9-6, 46-12.9-7, 46-12.9-9
2 and 46-12.9-11 of the General Laws in Chapter 46-12.9 entitled "Rhode Island Underground
3 Storage Tank Financial Responsibility Act" are hereby amended to read as follows:

4 **46-12.9-3. Definitions.**

5 When used in this chapter:

6 (1) "Advisory board" means the Rhode Island underground storage tank financial
7 responsibility advisory board established pursuant to the provisions of § 46-12.9-8.

8 (2) "Department" means the Rhode Island department of environmental management.

9 (3) "Director" means the director of the department of environmental management, or his
10 or her designee.

11 (4) "Eligible costs" means costs, expenses, and other obligations as incurred by a
12 responsible party for site investigation, site remediation, or other corrective-action activities
13 ordered or directed, and approved, by the department or performed by the responsible party and
14 not specifically identified by the department as ineligible.

15 (5) "Facility" means any parcel of real estate or contiguous parcels of real estate owned
16 and/or operated by the same person(s), which together with all land, structures, facility
17 components, improvements, fixtures and other appurtenances located therein form a distinct
18 geographic unit and at which petroleum products or hazardous materials are or have been stored

1 in underground storage tanks.

2 ~~(5)~~(6) "Fund" means the Rhode Island underground storage tank financial responsibility
3 fund established herein.

4 ~~(6)~~(7) "Operator" means any person in control of, or having the responsibility for, the
5 daily operation of an underground, storage-tank system.

6 ~~(7)~~(8) "Owner" means any ~~agency or political subdivision of the state; any municipality;~~
7 ~~public or private corporation or authority; individual; trust; firm; joint stock company;~~
8 ~~partnership, association, or other entity; and any officer, employee, or agent thereof~~ person,
9 corporation, group, or other entity who holds exclusive or joint title to, or lawful possession of, a
10 facility or part of a facility.

11 ~~(8)~~(9) "Petroleum product" ~~means crude oil, crude oil fractions, and refined petroleum~~
12 ~~fractions, including gasoline, kerosene, heating oils, used/waste oil, and diesel fuels.~~ means crude
13 oil or any fractions thereof that is liquid at standard conditions of temperature sixty degrees
14 Fahrenheit (60°F) and pressure fourteen and seven tenths pounds per square inch absolute (14.7
15 psia) and includes substances derived from crude oil including, but not limited to, the following:

16 (i) Gasoline;

17 (ii) Fuel Oils;

18 (iii) Diesel Oils;

19 (iv) Waste Oils;

20 (v) Gasohol, lubricants and solvents.

21 (9)(10) "Release" ~~means any leaking, emitting, discharging, escaping, or leaching of~~
22 ~~petroleum from any underground storage tank or underground storage tank system into the~~
23 ~~environment.~~ means any spilling, leaking, pumping, pouring, injecting, emitting, escaping,
24 leaching, discharging or disposing of any material stored in an underground storage tank system
25 subject to these regulations into groundwater, surface water, soil, air or any other environmental
26 media.

27 ~~(10)~~(11) "Responsible party" means the person or persons liable for release of petroleum
28 or the remediation of a release.

29 ~~(11)~~~~(i)~~(12) "Site" means any location at which, or from which, there has been a release
30 of petroleum associated with an underground storage tank or an underground storage-tank
31 system, or any location to which such petroleum has migrated.

32 ~~(i) For the purposes of this chapter, "government site" means any location owned or~~
33 ~~occupied, or previously owned or occupied, by any city or town, the state, or any agency of the~~
34 ~~state, of which or from which there has been a release of petroleum associated with an~~

1 ~~underground storage tank and underground storage tank system.~~

2 ~~(12) "Underground storage tank" means any one or combination of tanks, including~~
3 ~~underground pipes connected thereto, used to contain an accumulation of petroleum and the~~
4 ~~volume of which, including the volume of underground pipes connected thereto, is ten percent~~
5 ~~(10%) or more beneath the surface of the ground.~~

6 ~~(13) "Underground storage tank system" means an underground storage tank and its~~
7 ~~associated ancillary equipment and containment system, if any~~ "UST" or "Underground storage
8 tank system" means any one or more underground tanks, and their associated components,
9 including piping, used to contain, transport, or store petroleum product or hazardous material
10 whose volume is ten percent (10%) or more beneath the surface of the ground.

11 **46-12.9-4. Petroleum cleanup fund.**

12 (a) There is hereby established the Rhode Island underground storage tank financial
13 responsibility fund.

14 (b) The fund shall consist of any funds which the state may from time to time
15 appropriate, as well as money received as gifts, grants, bequests, donations or other funds from
16 any public or private sources ~~or annual tank registration fees~~ as established herein which are
17 intended to serve the purposes of the Rhode Island underground tank financial responsibility fund
18 and all funds collected pursuant to § 46-12.9-11.

19 (c) All funds collected pursuant to this section shall be deposited in the underground
20 storage tank fees fund, and shall be disbursed according to the purposes expressed in § 46-12.9-5.

21 **46-12.9-5. Purpose of fund.**

22 (a) The purpose of the fund shall be to facilitate the clean-up of releases from leaking
23 underground storage tanks, underground storage-tank systems, including those located on sites ~~or~~
24 ~~government sites~~ in order to protect the environment, including drinking water supplies and
25 public health, ~~and to take necessary action to proactively prevent such releases.~~

26 (b) The fund shall provide reimbursement to responsible parties for the eligible costs
27 incurred by them as a result of releases of certain petroleum from underground storage tanks or
28 underground storage-tank systems as provided herein. Monies in the fund shall be dispensed only
29 upon the order of the department for the following purposes:

30 (1) The fund shall pay not more than one million dollars (\$1,000,000) per incident, and
31 up to two million dollars (\$2,000,000) in the aggregate, for damages of eligible costs, as defined
32 in regulations promulgated hereunder and, as further defined in § 46-12.9-3, excluding legal costs
33 and expenses, incurred by a responsible party as a result of a release of petroleum from an
34 underground storage tank or underground storage tank system; provided, however, that a

1 responsible party ~~shall~~ may be responsible for the first twenty thousand dollars (\$20,000) of said
2 eligible costs;

3 (2) Reimbursement for any third-party claim including, but not limited to, claims for
4 bodily injury, property damage, and damage to natural resources which are asserted against a
5 responsible party and which have arisen as a result of a release of petroleum from an underground
6 storage tank or underground storage-tank system, in an amount not to exceed one million dollars
7 (\$1,000,000) for each release as set forth in subsection (b)(1); provided, that such claims are
8 found by the department to be justified, reasonable, related to the release of petroleum, and not
9 excessive or spurious in nature;

10 (3) ~~Eligible costs~~ Costs incurred by the department in carrying out the investigative,
11 remedial, and corrective action activities at sites of a petroleum release associated with an
12 underground storage tank or underground storage-tank system where the responsible party fails to
13 comply with an order of the department to ~~take such corrective action~~ undertake such activities.
14 In the event of such failure or documented inability to comply, the department may access the
15 fund to perform the ordered work and ~~shall~~ may proceed to recover from the responsible party, on
16 behalf of the fund, any amount expended from the fund by the department;

17 (4) Nothing contained in this chapter shall be construed to prevent subrogation by the
18 state of Rhode Island against any responsible party, other than the owner and/or operator, for all
19 sums of money which the fund shall be obligated to pay hereunder, plus reasonable attorneys'
20 fees and costs of litigation and such right of subrogation is hereby created; and

21 (5) Eligible costs incurred by the department to support the fund, including, but not
22 limited to, all personnel support to process and review of claims in order to formulate
23 recommendations for reimbursement for consideration, and providing meeting space for board
24 meetings; provided, however, that no more than five hundred and fifty thousand dollars
25 (\$550,000) shall be dispensed from the fund for administrative purposes during any fiscal year.
26 The department shall directly access the fund, pursuant to the limits set forth in subdivision 46-
27 12.9-5(b)(1), to pay for such expenses.

28 (6) [Deleted by P.L. 2016, ch. 148, § 1 and P.L. 2016, ch. 160, § 1].

29 **46-12.9-6. Eligibility.**

30 (a) In order to be eligible for reimbursement from the fund for eligible costs a responsible
31 party must be subject to financial responsibility as required by the EPA (40 C.F.R. part 280
32 subpart H) and:

33 (1) Have substantially complied with all state ~~technical~~ regulatory requirements for
34 underground storage tanks and underground storage tank systems as promulgated by the

1 department of environmental management pursuant to chapter 12 of this title and chapter 17.1 of
2 title 42, including, but not limited to, requirements for registration, proper installation, spill
3 containment, line leak detection, corrosion protection, leak detection, tank tightness testing,
4 inventory control, closure and leak or spill reporting;

5 (2) Have incurred an eligible cost in excess of the deductible amount specified in § 46-
6 12.9-5(b)(1) whether for clean-up or related matters or for claims of third parties as set forth in §
7 46-12.9-3 resulting from a release of petroleum, subject to the motor and special fuels tax from an
8 underground storage tank or underground storage tank system. In order to apply for
9 reimbursement from the fund, it shall not be necessary that the third party and the responsible
10 party complete adjudication of any claim before submission to the ~~review-board~~ [department](#);
11 provided, however, that all such claims shall be reasonably verified and must be demonstrated to
12 the reasonable satisfaction of the ~~review-board~~ [department](#) in order to be considered eligible for
13 reimbursement.

14 (b) Notwithstanding the financial responsibility requirement of this section, responsible
15 parties may be eligible for reimbursement of eligible costs incurred for ~~government~~ sites provided
16 that:

17 (1) A city, town, the state or a state agency is the responsible party for a release at the
18 ~~government~~ site and was the owner of the site at the time of the release;

19 (2) A city, town, the state or a state agency is the responsible party and owner of the
20 ~~government~~ site at the time of application on which a release occurred prior to the city, town or
21 state agency's ownership, provided that the government entity purchased the property prior to
22 March 1, 1998; or

23 (3) A city, town, the state or a state agency was the responsible party at the time of the
24 release and the ~~government~~ site is owned by a successor in interest at the time of application.

25 (c) Incurred costs eligible for reimbursement may be submitted to the department up to
26 two (2) years from the date on the originally-issued invoice(s) for the incurred costs. Any
27 invoices submitted after this two (2) year deadline will be considered ineligible for
28 reimbursement.

29 ~~(e)~~(d) Notwithstanding the requirement that the released petroleum be subject to the
30 motor and special fuels tax, underground storage tanks containing petroleum products for which
31 the motor and special fuels tax is inapplicable including, but not limited to, underground storage
32 tanks used for the distribution of No. 2 heating oil, used/waste oil, kerosene or other materials as
33 deemed appropriate by the ~~review-board~~ [department](#) may be eligible for reimbursement with the
34 following exceptions:

1 (1) Underground storage tanks containing heating or fuel oils used solely for onsite
2 consumption shall not be eligible.

3 (2) Underground storage tanks exempted from the department's "regulations for
4 underground storage facilities used for petroleum products and hazardous materials" ~~under~~
5 ~~Section 5.03 and Section 9.01 (A-D) shall not be eligible.~~

6 **46-12.9-7. Rules and regulations.**

7 The department is hereby authorized to promulgate, implement, and amend regulations,
8 in accordance with the provisions of chapter 35 of title 42, providing for the submission of claims
9 to the fund and the timely disbursement of monies from the fund. Such regulations shall include,
10 but not be limited to, the following:

11 (1) A means of notifying all eligible parties of the existence and functioning of the fund;

12 (2) The record keeping required of eligible parties for submission to, and reimbursement
13 from the fund;

14 (3) A set criteria which establishes the eligibility for reimbursement of specific costs,
15 expenses, and other obligations;

16 (4) A method of providing periodic reimbursement for eligible costs incurred by an
17 eligible party after July 8, 1994. Such reimbursement shall be processed in the order that the
18 claims were filed, subject to funds availability, except in the case where the director finds that
19 funds must be expended out of order in order to abate an environmental emergency;

20 (5) A requirement that the department render its decisions to an eligible party upon the
21 receipt of a complete claim for reimbursement within ninety (90) days following its receipt of
22 completed claim;

23 (6) Establishing procedures for verifying claims presented under this chapter;

24 (7) Establishing procedures for approving, modifying, or denying claims;

25 (8) The eligibility of claims shall be determined by the department; provided, however,
26 that no claims shall be considered for costs incurred prior to January 1, 1994, by responsible
27 parties who are owners or operators of no more than one location containing underground storage
28 tanks and July 8, 1994, by all other responsible parties;

29 (9) Empowering the department to recognize and arrange for performance-based and
30 other contracts with the responsible party and/or contractor for the remediation of a release; and

31 (10) Empowering the department to arrange for the establishment of alternate means of
32 financial responsibility.

33 **46-12.9-9. Reconsideration hearing.**

34 Any person aggrieved by a decision on a claim submitted to the department may request

1 a reconsideration hearing before the department of environmental management administrative
2 adjudication division under the provisions of the regulations of that office and such regulations
3 shall be consistent with the Rhode Island administrative procedures act, chapter 35 of title 42.
4 Any such decision shall contain a notice of the right to request a hearing and may specify a
5 reasonable time limit, not to exceed twenty-one (21) days, within which said person shall request
6 a hearing. If no such request is made in a timely manner, the said person shall be deemed to have
7 assented to the decision. If a timely request is received, the ~~review board~~ department of
8 environmental management administrative adjudication division, within a reasonable period of
9 time, shall act upon such request in accordance with the provisions of the Rhode Island
10 administrative procedures act.

11 **46-12.9-11. Fundings.**

12 (a) There is hereby imposed an environmental protection regulatory fee of one cent
13 (\$0.01) per gallon payable of motor fuel, to be collected by distributors of motor fuel when the
14 product is sold to owners and/or operators of underground storage tanks. Each distributor shall be
15 responsible to the tax administrator for the collection of the regulatory fee, and if the distributor is
16 unable to recover the fee from the person who ordered the product, the distributor shall
17 nonetheless remit to the tax administrator the regulatory fee associated with the delivery. In
18 accordance with the regulations to be promulgated hereunder, the fee shall be collected, reported,
19 and paid to the Rhode Island division of taxation as a separate, line-item entry, on a quarterly tax
20 report by those persons charged with the collection, reporting, and payment of motor fuels taxes.
21 This fee shall be administered and collected by the division of taxation. Notwithstanding the
22 provisions of this section, the fee shall not be applicable to purchases by the United States
23 government.

24 (b) Of the one-cent-per-gallon (\$0.01) environmental-protection regulatory fee collected
25 by distributors of motor fuel and paid to the Rhode Island division of taxation, one-half cent
26 (\$0.005) shall be deposited in the intermodal surface transportation fund to be distributed
27 pursuant to § 31-36-20 and one-half cent (\$0.005) shall be paid to the ~~underground storage tank~~
28 ~~review board~~ fund. All environmental protection regulatory fees paid to the department, ~~including~~
29 ~~tank registration fees assessed pursuant to § 46-12.9-7(9)~~, shall be received by the department,
30 which shall keep such money in a distinct, interest-bearing, restricted-receipt account to the credit
31 of, and for the exclusive use of, the fund provided that for the period January 1, 2008, through
32 June 30, 2008, all revenues generated by the environmental protection regulatory fee, up to a
33 maximum of two million dollars (\$2,000,000), shall be deposited into the general fund. In fiscal
34 year 2009, all revenues generated by the environmental protection regulatory fee, up to a

1 maximum equivalent to two million two hundred thirty-seven thousand five hundred dollars
2 (\$2,237,500), shall be deposited into the intermodal surface transportation fund. All fees collected
3 may be invested as provided by law and all interest received on such investment shall be credited
4 to the fund.

5 (c) When the fund reaches the sum of eight million dollars (\$8,000,000), the imposition
6 of the fee set forth in this chapter shall be suspended, and the division of taxation shall notify all
7 persons responsible for the collection, reporting, and payments of the fee of the suspension. In the
8 event that the account balance of the fund subsequently is reduced to a sum less than five million
9 dollars (\$5,000,000) as a result of fund activity, the fee shall be reinstated by the division of
10 taxation, following proper notice thereof, and once reinstated, the collection, reporting, and
11 payment of the fee shall continue until the account balance again reaches the sum of eight million
12 dollars (\$8,000,000).

13 (d) Upon the determination by the advisory board and the department that the fund has
14 reached a balance sufficient to satisfy all pending or future claims, the advisory board shall
15 recommend to the general assembly the discontinuation of the imposition of the fee created in this
16 section.

17 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO WATERS AND NAVIGATION-RHODE ISLAND UNDERGROUND
STORAGE TANK FINANCIAL RESPONSIBILITY ACT

1 This act would amend the Rhode Island Underground Storage Tank Financial
2 Responsibility Act to streamline fund processes and amends or provides several new definitions.
3 The act would also assist the department of environmental management in accessing the
4 underground storage tank financial responsibility fund to conduct environmental cleanup for
5 business owners.

6 This act would take effect upon passage.

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